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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOSEPH L NICKOLS,

12 Plaintiff,

13 v.

14 STEVE MANSFIELD, JIM PEA, JACK
HASKINS, JULIE WEST, TERRY
WILSON,

15 Defendants.

CASE NO. C13-5942 BHS-JRC

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO COMPEL
DISCOVERY

16 This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate
17 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1,
18 MJR 3, and MJR 4.

19 Before the Court is defendants' motion to compel discovery (Dkt. 41). Plaintiff did not
20 respond to the motion. Defendants ask the Court to compel plaintiff to answer deposition
21 questions concerning plaintiff's conversion from one religious faith to another (*id.*). Plaintiff
22 refused to answer the question citing the First Amendment freedom of religion clause (Dkt. 42,
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1 Exhibit 6, ECF pp. 30-31). Plaintiff has also allegedly refused to answer interrogatories or
2 requests for production (Dkt. 41).

3 This action involves claims including defendants allegedly denying plaintiff his religious
4 rights (Dkt. 4, page 4). Thus, plaintiff's religious beliefs, his practice of religion, and his
5 conversion from one faith to another are all relevant areas of inquiry. During the deposition
6 itself the parties met and conferred regarding this issue and the following conversation was
7 transcribed:

8 Q. And what were the circumstances of you converting to Muslim in the year
9 2000?
A. I believe that question about my faith and my reason for conversion is
irrelevant.
Q. It actually is relevant because you have a claim based on your religion. So
are you refusing to answer it?
A. Yes. Under the First Amendment I have a right to practice any religion,
and I don't have to disclose to why I practice that religion.
Q. Well, part of your claim for religion requires you to make a showing that
it's a sincerely held belief and so I am permitted to inquire about the
circumstances of when you acquired those beliefs. And I will tell you that
if I have to move the court to compel you to come back here, it can
sanction you and there may be penalties for that so I would prefer not to
have to do that?
A. I fully understand your position, and I still hold my same grounds as
refusing to answer that question.
Q. Have you ever attended a mosque?
A. I refuse to answer that question.

17 (Dkt. 42, Exhibit 6, ECF p. 30-31).

18 Fed. R. Civ. P. 37(a)(1) requires a person moving to compel discovery to "include a
certification that the movant has in good faith conferred or attempted to confer with the person or
party failing to make disclosure or discovery in an effort to obtain it without court action." See
Fed. R. Civ. P. 37(a)(1). While defendants did not provide a separate certificate showing
compliance with Fed. R. Civ. P. 37, the excerpt from the deposition shows counsel making a

1 good faith effort in a face to face meeting to resolve the discovery dispute regarding the
2 deposition.

3 The Court grants the motion to compel discovery regarding the deposition questions. If
4 defendants choose to take an additional deposition of plaintiff, the Court orders that plaintiff
5 answer questions regarding his conversion from one religion to another and to answer the
6 questions he refused to answer that were set forth in (Dkt. 42- Exhibit 6, ECF p. 30-31).

7 The record does not reflect that the parties met or conferred after plaintiff did not provide
8 the written discovery requests. Pursuant to Fed. R. Civ. P. 37(a)(1), the Court denies this motion
9 to compel without prejudice.

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11 Dated this 9th day of June, 2014.

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14 J. Richard Creatura
United States Magistrate Judge
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